

**DECLARATION OF RESTRICTIVE COVENANTS**

STATE OF TEXAS           §  
                                     §  
COUNTY OF BEXAR       §

This **DECLARATION OF RESTRICTIVE COVENANTS** (this "**Declaration**") is made by LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation ("**Developer**"), as of the Effective Date (herein defined)

**W I T N E S S E T H**

**WHEREAS**, Developer is the owner of approximately 2,852.4 acres of real property (the "**Land**") located within the exclusive extraterritorial jurisdiction of City of San Antonio, Texas (the "**City**") described in the Act (as defined below) and more particularly described on **Exhibit "A"** attached hereto and incorporated herein for all purposes;

**WHEREAS**, the Land is located within the Edwards Aquifer Recharge Zone in northeastern Bexar County, Texas, and does or may have landforms which permit recharge to underground aquifers, including (without limitation) caves, sinkholes, solution cavities, faults and similar formations;

**WHEREAS**, Developer desires to develop the Land with a high quality, master-planned community; a full service, resort style hotel; single and multi-family residential housing; related commercial uses and up to three (3) golf courses (the "**Development**");

**WHEREAS**, in order to facilitate the Development and to serve a public use and benefit, the Legislature of the State of Texas established a conservation and reclamation district known as the Cibolo Canyon Conservation and Improvement District No. 1 (the "**District**"), which encompasses the Land, as set forth in the Senate Bill 1629, Acts of the 77th Legislature of the State of Texas, Regular Session 2001 (the "**Act**"); and

**WHEREAS**, pursuant to the Act, the establishment of District is subject to a confirmation election which cannot be held until City and District have reached a mutually acceptable agreement concerning the development and annexation of the Land, the operation of District, and District's debt (the "**Development Agreement**"); and

**WHEREAS**, as a condition of the Development Agreement, City requires and Developer has covenanted and agreed to restrict all of the Land, and such divisions, subdivisions and phases thereof and additions thereto as may hereafter be made, by and with the covenants and restrictions described herein (collectively, the "**Restrictions**"); and

**WHEREAS**, in order to effectuate the Restrictions, Developer has agreed to execute and to be bound by and to comply with this Declaration; and

**WHEREAS**, pursuant to the Development Agreement, this Declaration is to be fully effective from and after the Effective Date until this Declaration is or may be terminated according to the terms and conditions set forth herein,

**NOW, THEREFORE**, Developer does hereby declare that the Land shall be owned, held, mortgaged, transferred, sold, conveyed, occupied and enjoyed subject to the Restrictions, which shall run with the Land and shall be binding upon Developer and all parties having right, title, or interest in or to the Land or any part thereof, their heirs, successors, and assigns, and the Restrictions shall inure to the benefit of each owner thereof; and that each contract or deed conveying the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the Restrictions regardless of whether or not the same are set out in full or by reference in said contract or deed, from and after the Effective Date and until such time as this Declaration is terminated pursuant to the terms hereof.

### **Definitions**

For purposes hereof, the following terms shall be defined as set forth below:

1. ***“Above ground storage tank”*** means a non-vehicular device (including any associated piping) that is made of non-earthen materials, located on or above the ground surface, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement or vault, and containing an accumulation of static hydrocarbons or hazardous substances.
- 2.
3. ***“Act”*** means Senate Bill 1629, Acts of the 77<sup>th</sup> Legislature of the State of Texas, Regular Session 2001.
- 4.
5. ***“City”*** means the City of San Antonio, Texas, a municipal corporation.
- 6.
7. ***“Development Agreement”*** means that certain Development Agreement among City, Owner and District.
- 8.
9. ***“Development Land”*** means all portions of the Land other than the Golf Course/Open Space Tracts.
- 10.
11. ***“District”*** means Cibolo Canyon Conservation and Improvement District No. 1.
- 12.
13. ***“EAA”*** means the Edwards Aquifer Authority.
- 14.
15. ***“EARZ”*** means the Edward Aquifer Recharge Zone.
16. ***“Effective Date”*** means the date on which this Declaration has been signed by Developer, as evidenced by the acknowledgment date noted below.
- 17.

18. ***“Geologic Map”*** means the site geologic map of the Land attached to this Declaration as **Exhibit “B”**.
- 19.
20. ***“Golf Course Management Plan”*** means the Golf Course Environmental Management Plan attached to this Declaration as **Exhibit “H”**.
- 21.
22. ***“Golf Course/Open Space Tracts”*** means collectively, the tracts of land described in **Exhibit “C”**, **Exhibit “D”**, and **Exhibit “E”**.
- 23.
24. ***“Impervious Cover”*** means any impermeable construction covering the natural land surface, including, without implied limitation, pavement, roads, parking areas, buildings, pools, patios, sheds, driveways and sidewalks.
- 25.
26. ***“Land”*** means that tract of 2,852.4 acres, more or less, in Bexar County, Texas, as more particularly described by metes and bounds in **Exhibit “A”**, included in the District, as described in the Act.
- 27.
28. ***“Landowner”*** means individually and collectively, each owner of any part of or interest in the Land.
- 29.
30. ***“Official Records”*** means the Official Records of Real Property of Bexar County, Texas.
- 31.
32. ***“Restrictions”*** means collectively, the covenants and restrictions described in this Declaration.
- 33.
34. ***“SAWS”*** means San Antonio Water System, the City-owned water and sewer utility or its designated representative.
- 35.
36. ***“TNRCC”*** means the Texas Natural Resource Conservation Commission.
- 37.
38. ***“TNRCC Development Rules”*** means 30 TAC §213, et. seq.
- 39.
40. ***“Underground Storage Tanks”*** means any one or combination of underground tanks and any connecting underground pipes, containing one or more hydrocarbons or hazardous substances, the volume of which, including the volume of the connecting underground pipes, is ten percent (10%) or more beneath the surface of the ground.
- 41.
42. ***“WPAP”*** means a water pollution abatement plan prepared in accordance with this Declaration.
43. ***“WPAP Application”*** means all documentation submitted to SAWS and EAA seeking development approval of the portion of the Land therein described.
- 44.

## **Article 1. General Restrictions**

The Land shall be and is hereby encumbered by this Declaration and the following covenants and restrictions:

1. WPAP. Development of the Land is or may be subject to the rules adopted by the TNRCC for regulation of activities having the potential for pollution of the Edwards Aquifer and hydrologically connected surface streams and to maintain Texas Surface Water Quality Standards, as set forth in the TNRCC Development Rules. In addition to the requirements imposed by the TNRCC Development Rules, 'regulated activity' (as defined under the TNRCC Development Rules) is prohibited unless the subject portion of the Land is subject to a WPAP which has been approved in accordance with this Declaration.
  - a. Procedure. Each WPAP application shall be submitted to SAWS and EAA. No WPAP application shall be submitted to TNRCC unless and until that WPAP application has been reviewed and approved in writing by SAWS and EAA, or deemed approved in accordance with this Declaration.
  - a. Review Standards. The Chief of Water Resources of SAWS shall review the WPAP application to determine compliance with TNRCC Development Rules, this Declaration and all ordinances adopted by City regarding drainage, floodplain regulation and protection of the Edwards Aquifer and all amendments to such ordinances. EAA will review the WPAP to determine compliance with its existing guidelines or guidelines hereafter adopted by EAA, to the extent the Land or such portion thereof is subject to such guidelines.
  - b. Deemed Approval by SAWS. Each WPAP application will be deemed approved by SAWS if SAWS has not rejected the proposed WPAP on or before the forty-fifth (45<sup>th</sup>) day following the date on which a complete WPAP application has been submitted to SAWS. A WPAP application will be deemed rejected by SAWS if SAWS has notified the plan applicant, within such forty-five (45) day period, of any deficiency in the WPAP or in the documentation required to be submitted in connection with such application.
  - a. Deemed Approval by EAA. Each WPAP application will be deemed approved by EAA if EAA has not rejected the proposed WPAP on or before the forty-fifth (45<sup>th</sup>) day following the date on which a complete WPAP application has been submitted to EAA. A WPAP application will be deemed rejected by EAA if EAA has notified the plan applicant, within such forty-five (45) day period, of any deficiency in the EAA or in the documentation required to be submitted in connection with such application.
  - a. Submission to TNRCC. The WPAP application approved by SAWS and EAA shall be submitted to TNRCC, or any successor to its regulatory authority over the Land or any part thereof. No WPAP application shall be submitted to

TNRCC which has not been approved (or deemed approved) by SAWS and EAA.

- a. Conflict Resolution. In the event of any conflict between the requirements imposed by SAWS and EAA with respect to approval of a WPAP application, the more stringent requirement shall be adopted by the plan applicant in the WPAP application submitted to TNRCC and approval thereof shall be deemed given by SAWS and EAA. In the event of an irreconcilable conflict between the requirements imposed by SAWS and EAA with respect to a WPAP application, the plan applicant shall submit such conflicting requirements to City for a final, binding determination of the manner in which the conflict shall be resolved.
- a. Expansion of EAA Enforcement Powers. EAA's approval of WPAP applications pursuant to this Declaration shall no longer be required pursuant to this Declaration if:
  - i. EAA has been authorized by applicable law to review and either approve or deny Edwards Aquifer protection plan applications within the EARZ and enforce compliance thereof; or
  - ii. EAA has been certified by the Director of the TNRCC to assume the rights, duties and responsibilities of the TNRCC to review and either approve or deny Edwards Aquifer protection plan applications within the EARZ and monitor and enforce compliance thereof, so long as such certification shall remain in effect pursuant to 30 TAC §213.4.
2. Tree Preservation Ordinance. The Tree Preservation Ordinance as set forth in Section 35-523 of the City of San Antonio Uniform Development Code, as amended, shall apply to the Land.
2. Aquifer Protection Ordinances of City of San Antonio. The Land shall be subject to, and each Landowner shall abide by, comply with and observe City's ordinances regarding drainage, flood plain regulation and aquifer protection, all of which shall be binding upon such Landowner, including (without implied limitation):
  - a. Aquifer Protection Ordinance No. 81491, reflected in the San Antonio City Code, Chapter 34, Article VI, Division 6, Sections 901 - 999, inclusive;
  - a. Underground Storage Tank Ban on the Edwards Recharge Zone Ordinance No. 81147, reflected in the San Antonio City Code, Chapter 3\_\_, Article \_\_, Division Sections \_\_\_\_, inclusive;
  - b. Underground Storage Tank Management Program Ordinance No. 83200, reflected in the San Antonio City Code, Section 34, Article VI, Division 7, Sections 1000 - 1100, inclusive;

- a. Construction Site Ordinance No. 94002, reflected in the San Antonio City Code, Section 34, Article VI, Division 4, Subdivision B, Sections 801 - 900, inclusive;
- a. Aquifer Management Plan Ordinance No. 80574, reflected in the San Antonio City Code, Chapter 34, Article IV, Divisions 1-4, Sections 287 - 350, inclusive, sometimes known as the 'Critical Period Management Rules';
- a. Water Waste Enforcement Ordinance No. 92179, reflected in the City Code of San Antonio as Sections 34-287 through 34-315, inclusive;
- a. Water Quality Control and Pollution Prevention Ordinance No. 80574, reflected in the San Antonio City Code, Chapter 34, Article VI, Sections 551 - 712, inclusive; and
- b. Any amendments to the City ordinances which District is required to comply with under the requirements set forth in the Act.

All such ordinances and amendments to ordinances shall apply to the Development Land and to the Landowner, notwithstanding any geographical or other limitation set forth in or applicable to any of such ordinances or amendments to ordinances. By acquiring title to or possession of any part of the Land or any interest therein, each Landowner (including, without limitation, Developer) confirms the authority of City and/or SAWS to implement and enforce such ordinances and amendments to ordinances, to exercise the rights and powers conferred by such ordinances and amendments to ordinances, and to levy and impose the civil and other penalties authorized by such ordinances.

- 2. Impervious Cover. Impervious Cover on the Land shall not exceed fifteen percent (15%) of total Land area upon completion of all improvements, as calculated pursuant to the San Antonio Aquifer Protection Ordinance No. 81491. A letter of accounting shall be submitted to the SAWS Resource Protection and Compliance Department with each WPAP required by this Declaration. The letter shall identify the total then-existing Impervious Cover on the Land and the proposed Impervious Cover within the area covered by the WPAP. In the event that SAWS determines that the development of the Land has reached the fifteen percent (15%) Impervious Cover limitation, then further development of Impervious Cover on the Land shall be strictly prohibited.
- 2. Sensitive Recharge Features. Sensitive recharge features known to exist on the Land at the time of the execution of this Declaration, as well as areas identified for additional study and determination, are shown on the Geologic Map.
  - a. Buffering. All sensitive recharge features shown on the Geologic Map and those additional sensitive recharge features discovered upon further study of the Land or during development of the Land shall be buffered or otherwise protected by measures determined by SAWS to be appropriate under the attendant circumstances of such feature. The Geologic Map shall be updated by SAWS no

less often than annually to reflect all identified sensitive recharge features and all buffering or other protective measures imposed with respect to each sensitive recharge feature.

- a. Discovery during Construction. If any other sensitive recharge features are detected on the Land during land development, construction or otherwise, all activities which could potentially impact or affect such sensitive recharge feature shall cease until the Landowner or the Landowner's contractor has notified the SAWS Resource Protection and Compliance Department Director, the TNRCC and any other entity with jurisdiction to regulate and protect the Edwards Aquifer and has obtained all required authorization(s) for resumption of construction activities. Each Landowner shall implement, at the Landowner's sole expense, such temporary and permanent best management practices to protect sensitive recharge features, as required by SAWS, TNRCC and/or any other entity with jurisdiction, on an immediate basis. All further construction activity which could affect such sensitive recharge feature(s) shall incorporate temporary and permanent best management practices, as required by such entities.
2. Underground Storage Tanks. The installation or operation of underground storage tanks, whether on a temporary or permanent basis, is prohibited.
2. Above Ground Storage Tanks. No above ground storage tanks may be installed on the Land unless such tanks comply with the requirements of the Golf Course Management Plan.
2. Recycled Water Use. No treated or recycled wastewater may be used for irrigation purposes on the Land unless and until an ordinance has been adopted by City permitting such use in the EARZ. Upon the adoption of such ordinance by City, use of treated or recycled wastewater shall comply with such ordinance and all other rules and regulations of applicable authorities relating to or restricting such use.
2. Water Wells. No water wells may be drilled or operated on the Land without the prior consent of SAWS, whether or not permitted by any utility or governmental or regulatory authority other than SAWS.
2. Private Sewage Facilities. No on-site sewage facilities, as defined under 30 TAC §285.2, may be located on the Land.

## **Article 2. Restrictions Applicable to Development Land**

Those portions of the Land not utilized for the purposes of a golf course (as defined and described in **Article 3** below) are referred to in this Declaration as the “**Development Land**” and shall be and are hereby encumbered by the Restrictions set forth in **Article 1** of this Declaration

and the following covenants and restrictions:

1. Landscaping. Only low-water use landscapes will be permitted in landscaping lawns, ornamental landscape areas, greenbelts and open space areas on the Development Land. The landscapes shall comply with City guidelines established for new construction xeriscapes, including:
  - a. Use of native species which are drought tolerant and require low-water usage; no more than fifty percent (50%) of landscape areas shall be covered by turf grass and no more than ten percent (10%) of landscape areas may include high-water need plants such as annuals;
  - a. Preservation of existing tree canopy or installation of high-quality shade trees, using species identified by the Texas Forestry Service as appropriate; and
  - a. Irrigation systems shall be not less than eighty-five percent (85%) efficient.
1. Pesticides and Herbicides; Fertilizers. Indiscriminate or irresponsible use and application of chemicals and other substances to control animal and plant pests and to stimulate plant growth can cause degradation of surface and ground water quality. All Development Land shall be subject to any requirements and restrictions which may be imposed by SAWS from time to time to protect water quality, including (without limitation) moratoria on the application of specific or all pesticides, herbicides, fertilizers or other substances believed to have the potential for degrading water quality in the Edwards Aquifer. Without limiting the authority of SAWS to impose any additional requirements or restrictions (including moratoria):
  - a. Fertilizers. Only approved organic fertilizers may be applied to the Development Land. An organic fertilizer will be deemed approved for so long as such substance has been certified for use by SAWS. No fertilizer applications may occur in buffer zone areas.
  - a. Pesticides and Herbicides. Only approved organic pesticides and herbicides may be used to control potential pests requiring treatment in landscaped areas, including without limitation, fire ants, mosquitoes, roaches, rodents, fleas, termites and turfgrass weeds, diseases and pests. An organic pesticide or herbicide will be deemed approved for so long as such substance has been certified for use by SAWS. No pesticide or herbicide applications may occur in buffer zone areas.
1. Construction Requirements. All construction activities on the Development Land shall be subject to the following limitations, conditions and requirements:
  - a. Waste. All construction related waste, including without limitation, oils, grease, tires, batteries, cleaning solvents and empty containers, shall be disposed of in

approved, covered, non-leaking containers, in a timely manner in accordance with applicable regulations.

- a. Fuel Storage. Fuels shall not be stored on the Development Land.
- a. Fuel Spills. Any spills or releases of fuels or other potentially polluting substances or materials shall be cleaned immediately and disposed of in accordance with all applicable regulations. All details concerning the spill or release shall be documented, including the subject product, quantity spilled or released, location, time, date, action taken and any other requested information, and shall be reported to SAWS Construction Compliance Section on an immediate basis.

### **Article 3. Restrictions on Golf Course/Open Space Tracts**

Six hundred eighty (680) acres, more or less, of the Land has been identified by Developer for use as either golf courses or open space area (the “***Golf Course/Open Space Tracts***”). The Golf Course/Open Space Tracts and, to the extent hereafter set forth, certain other identified, related areas shall be and are hereby encumbered by the Restrictions set forth in **Article 1** of this Declaration and the following covenants and restrictions:

1. Identification of Golf Course/Opens Space Tracts. The Golf Course/Open Space Tracts consist of three (3) tracts located within the Land:
  - a. Tract One. The legal description of the first tract within the Golf Course/Open Space Tracts (“***Tract One***”), comprising \_\_\_\_ acres, is set forth on **Exhibit “C”** attached hereto and incorporated herein.
  - a. Tract Two. The legal description of the second tract within the Restricted Land (“***Tract Two***”), comprising \_\_\_\_ acres, is set forth on **Exhibit “D”** attached hereto and incorporated herein.
  - a. Tract Three. As of the Effective Date, Developer has not determined the exact location of the third tract within the Restricted Land (“***Tract Three***”); however, Tract Three shall contain not less than \_\_\_\_ acres, being the difference between 680 acres and the total aggregate acreage of Tract One and Tract Two, and will be a part of that tract of undeveloped land described in **Exhibit “E”**. When Developer has determined the exact location of Tract Three, Developer shall record in the Official Records an amendment to this Declaration, in the form attached hereto as **Exhibit “F”** (the “***Amendment***”), setting forth the legal description of Tract Three. Developer may not commence development within that certain real property described in **Exhibit “E”**, until the Amendment is recorded in the Official Records. Nothing in this **Subsection 1(c)** shall prohibit Developer from using separate and distinct tracts to comprise Tract Three, if

Developer so desires, as long as each separate tract comprising Tract Three either shall be sixty-five (65) acres in gross area or shall have a common boundary line with one or more of the tracts of land described by metes and bounds in **Exhibit “G”**.

- a. Minor Corrections to Legal Descriptions. Until such time as construction shall commence on the golf courses to be located on Tract One and Tract Two, if the design dimensions for either or both golf courses do not conform to the legal descriptions attached hereto as **Exhibit “C”** and **Exhibit “D”**, Developer may file an amendment to this Declaration correcting the descriptions of Tract One and/or Tract Two without the approval of City and District if:
  - i. The corrected description(s) do not reduce the total acreage of the Golf Course/Open Space Tracts by more than a total of five (5) acres; and
  - i. The amendment filed by Developer shall contain a representation that such corrected descriptions do not reduce the total acreage of the Golf Course/Open Space Tracts by more than a total of five (5) acres.
1. Use. The Golf Course/Open Space Tracts shall not be used, leased, or occupied, directly or indirectly for any purpose other than either (i) golf course(s) or (ii) open space area. For purposes of this Declaration:
  - a. “golf course” shall mean the construction, operation, and maintenance of an eighteen (18) hole or executive golf course, rest areas, pedestrian paths, golf cart paths, utilities, and related uses and facilities, but excluding all related or other improvements such as clubhouses, pro shops, vending or snack facilities, maintenance facilities, golf cart repair, and parking and maintenance areas; and
  - a. “open space area” shall mean land or water area for human use and enjoyment which is relatively free of man-made structures.
1. Golf Course Management Plan. Each portion of the Golf Course/Open Space Tracts used as a golf course, and all related or other improvements such as clubhouses, pro shops, vending or snack facilities, maintenance facilities, golf cart repair and parking and maintenance areas, shall be subject to the terms, conditions, restrictions, duties and obligations to be observed and performed pursuant to that certain Golf Course Management Plan attached hereto for all purposes as **Exhibit “H”**, as same may be amended from time to time.

#### **Article 4. Easements and Access.**

Pursuant to the Golf Course Management Plan, SAWS will conduct surface water sampling at locations on the Land identified by SAWS, from time to time. SAWS will also

monitor ground water quality by sampling from water wells located or to be located on the Land, from time to time. There is hereby created a right of ingress and egress across, over, and under the Land in favor of SAWS, EAA, District and City for the purposes of monitoring compliance with the Restrictions and for all activities necessary to undertake, from time to time, evaluation and monitoring of surface water and groundwater quality in accordance with the Golf Course Management Plan. An easement is hereby extended and acknowledged in favor of SAWS, EAA, District and City and their respective employees and agents to enter upon the Land in the performance of their duties with respect to the Restrictions, the Golf Course Management Plan, water quality monitoring and protection of surface and groundwater subject to the limitation that such easement rights shall not be exercised in a manner or at a time which interferes with the use and enjoyment of the Golf Course/Open Space Tracts and related facilities.

#### **Article 5. Enforcement.**

1. Enforcing Authorities. Enforcement of the Restrictions of this Declaration set forth herein may be by Developer, its successors and assigns, or the governing body or authorized representative of City, of SAWS, of EAA or of District, acting singly or in concert.
1. Remedies. Enforcement of the Restrictions of this Declaration may be by a proceeding at law or in equity against any person(s) or entity(ies) violating or attempting to violate the Restrictions, whether the relief sought is an injunction or the recovery of damages, or otherwise.
1. Non-Waiver. Any failure or delay in enforcing any Restriction set forth herein shall in no event be deemed to be a waiver of the right to do so or to seek damages or other relief thereafter.
1. No Affirmative Obligation to Enforce. The failure of any person to comply with these Restrictions shall in no event be deemed or construed to impose liability of any nature on SAWS, EAA, District or City, or the governing body or authorized representative of each of them. Neither SAWS, EAA, District nor City has an affirmative duty to police, control or enforce such Restrictions for the benefit of any third party.

#### **Article 6. Amendment or Termination.**

1. Agreed Termination. This Declaration may be amended, supplemented or terminated as to all or any portion of the Land at such time that a written agreement, signed by (i) Developer or its successor in ownership of such portion of the Land, (ii) the governing body or an authorized representative of City, and (iii) the governing body or an authorized representative of District, is recorded in the Official Records.
1. Termination Prior to Construction of Hotel. Developer may terminate this Declaration at any time prior to the commencement of construction of the first hotel on the Land by recording an affidavit in the Official Records, signed and sworn to by Developer, stating that

(i) the Development Agreement has been terminated according to its terms and (ii) commencement of construction of the first hotel on the Land has not yet commenced. Thereafter, this Declaration shall be of no further force or effect. For the purposes of this Declaration and such affidavit, '**commencement of construction**' has occurred on the date that site grading has commenced on the site identified as the location of the proposed hotel on any documents submitted to City and has continued for at least thirty (30) days.

2.

3. Termination After Commencement of Construction of Hotel. Developer may terminate this Declaration after commencement of construction, but prior to completion of construction, of the first hotel on the Land by filing an affidavit in the Official Records, signed and sworn to by Developer, stating that (i) the Development Agreement has been terminated according to its terms and (ii) completion of construction of the first hotel on the Land has not occurred. Upon such termination, this Declaration shall be terminated in all respects except (a) the Land shall be subject to the Impervious Cover limitations for Category 2 land pursuant to Section 34-912 of the City Code of City and [(b) the Restrictions shall be applicable to all of the Land which is used as a golf course on the date of termination and all related improvements such as clubhouses, pro shops, vending or snack facilities, maintenance facilities, golf cart repair and parking and maintenance areas.] For the purposes of this Declaration and such affidavit, '**completion of construction**' has occurred on the first (1st) date on which a Certificate of Compliance has been issued by the Bexar County Fire Marshall or the third (3<sup>rd</sup>) anniversary of the date on which commencement of construction has occurred, as determined in accordance with the preceding section of this Article 6, whichever occurs first..

## **Article 7. Miscellaneous Provisions.**

1. Notices. Any demand, request or other notice (collectively, a "**Notice**") required or permitted to be given hereunder, or otherwise given in regard to this Declaration shall be in writing and the same shall be given and be deemed to have been served and received (a) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is being given (or, if applicable, when delivery is refused by the party to whom notice is being given), or (b) if mailed, on the date which is two (2) business days following the date on which such notice is placed in the United States mail, postage pre-paid, by certified mail, return receipt requested, addressed to the party to whom notice is being given at the address for such party hereinafter specified. Any party may change its address for notices by giving five (5) days' advance written notice thereof in accordance with this paragraph. Until changed in the foregoing manner, the party's respective addresses for notices hereunder are as follows:

If to City:	City of San Antonio
	100 Military Plaza, 1 <sup>st</sup> Floor
	San Antonio, Texas 78207
	Attention: Director of Development Services

With copies to: City Clerk  
100 Military Plaza, 2<sup>nd</sup> Floor  
San Antonio, Texas 78207

And

City Attorney  
100 Military Plaza, 3<sup>rd</sup> Floor  
San Antonio, Texas 78207

If to Developer: Lumbermen's Investment Corporation  
5495 Beltline Road, Suite 225  
Dallas, Texas 75240  
Attention: President

With a copy to: Lumbermen's Investment Corporation  
1300 S. MoPac Expressway  
Austin, Texas 78746  
Attention: General Counsel

If to District: Cibolo Canyon Conservation and Improvement District No.  
c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
300 Convent, Suite 1500  
San Antonio, Texas 78205

With a copy to: Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
300 Convent, Suite 1500  
San Antonio, Texas 78205  
Attention: M. Paul Martin

1. Severability. The invalidation of any one of the Restrictions or covenants herein contained, or the failure to enforce any of such Restrictions or covenants at the time of its violation, shall in no event affect any of the other Restrictions or covenants contained nor be deemed a waiver of the right to enforce the same or any other restriction or covenant thereafter.
1. Constructive Notice and Acceptance. Every person who, now or hereafter, owns or acquires any right, title, or interest in or to any portion of the Land, whether as an owner, tenant, or occupant in any right or capacity, is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction herein contained, whether or not any reference to this Declaration shall be contained in the instrument by which such party acquires an interest in such portion of the Land.
1. Titles. The titles, headings, and captions used in this instrument are for convenience

only and are not to be used in construing this instrument or any part hereof.

1. Continuing Effect. This Declaration, and all of its terms, provisions, covenants, conditions, and restrictions, shall run with the Land and be binding upon all future owners, tenants, and/or occupants of all or any portion of the Land, and their respective heirs, legal representatives, successors, and assigns.
1. Exhibits. All documents referred to herein and all documents attached hereto are incorporated herein for all purposes.
1. Interpretation. If this Declaration or anything set forth herein is or may be capable of interpretation in two or more conflicting ways, then the interpretation which is most nearly in accord with the general principals, purposes and objectives of this Declaration shall govern and control the meaning thereof. If any punctuation, word, clause or provision necessary to give effect to any other word, clause or provision hereof has been omitted, then it is understood that such omission was unintentional and the omission may be supplied by inference.
1. Attorneys' fees. Any person who incurs reasonable expenses of any kind, including attorneys' fees, to enforce this Declaration is entitled to recover such expenses from the party against whom enforcement actions were taken.
1. Waiver. The Restrictions shall not be waived or rendered unenforceable by reason of any lack of enforcement by City, SAWS, Developer or District.
1. Effective Date. This Declaration is dated as of the Effective Date.

**[Signature page follows]**

Witness the hand of an authorized representative of Developer on the acknowledgment date noted below.

**DEVELOPER:**

**LUMBERMEN'S INVESTMENT CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_

Name : \_\_\_\_\_

Title: \_\_\_\_\_

THE STATE OF TEXAS                   §

  §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of **LUMBERMEN'S INVESTMENT CORPORATION**, a Delaware corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Printed/Typed Name

**EXHIBITS:**

Exhibit "A": Legal Description of the Land

Exhibit "B": Geologic Map

Exhibit "C": Tract One of Golf Course/Open Space Tracts

Exhibit "D": Tract Two of Golf Course/Open Space Tracts

Exhibit "E": Tract Three of Golf Course/Open Space Tracts

Exhibit "F": Form of Amendment

Exhibit "G": Open Space Tracts (Wolverton & LIC Open Space)

Exhibit "H": Golf Course Management Plan